



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201308035

UIL:408.03.00

NOV 29 2012

T:EP:RA:T3

**Legend:**

Taxpayer A =

IRA X =

Amount A =

Financial Institution A =

Financial Institution B =

Dear

This is in response to your request dated July 9, 20 , as supplemented by correspondence dated October 5, 20 , in which your authorized representative, on your behalf, requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he received a distribution from Financial Institution A of Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error made by Financial Institution B. Taxpayer A further represents that the amount distributed has not been used for any other purpose.

Taxpayer A opened an Individual Retirement Account (IRA X) with Financial Institution A on January 3, 20 . Taxpayer A, with the intent to move IRA X to a new financial institution, requested that a check be issued to him for the balance in the account. On February 28, 20 , Taxpayer A was issued a

**201308035**

check, payable to him, for Amount A. Taxpayer A then went directly to Financial Institution B, accompanied by his wife, and instructed Financial Institution B to open a rollover IRA account and deposit Amount A into that IRA account.

According to Taxpayer A, Financial Institution B's representative asked if he wished to have both his and his wife's name shown on the account. Taxpayer A states that he was informed that it was alright to have both names on the account and that statements would be addressed to his wife as she was a member of Financial Institution B. Quarterly statements furnished from Financial Institution B show that no withdrawal has been made from the account.

Taxpayer A first became aware that IRA X was not properly rolled over when his 20 tax return was being prepared and his accountant questioned him concerning the 1099-R issued by Financial Institution A showing a distribution of Amount A. Taxpayer A's wife then contacted Financial Institution B to discuss the issue with them and to inform them that Taxpayer A's intent was to roll over Amount A into an Individual Retirement Account and that it was his understanding that this had been done. In response to this inquiry, Financial Institution A provided a letter, dated February 28, 20 , acknowledging Taxpayer A's intent to rollover Amount A to an IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error on the part of Financial Institution B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A. from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the Taxpayer A who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose